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Attorneys for Defendants
RETENTION PERFORMANCE
MARKETING, INC. AND ONECOMMAND INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

INSWEB CORPORATION, LEADPOINT,
INC., INTERNET BRANDS, INC. AND
AUTO INTERNET MARKETING, INC.

Plaintiffs,

v.

AUTOBYTEL INC., AUTOBYTEL 1 CORP.,
F/K/A AVV, INC., DOMINION
ENTERPRISES, RETENTION
PERFORMANCE MARKETING, INC. AND
ONECOMMAND INC.

Defendants.

Case No. 08cv0447 WQH LSP

**ANSWER AND COUNTERCLAIMS OF
RETENTION PERFORMANCE
MARKETING, INC. AND
ONECOMMAND INC. TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT**

JURY TRIAL DEMAND

1 Defendants Retention Performance Marketing, Inc. and OneCommand, Inc.
2 (collectively, the "OneCommand Defendants") hereby respond for themselves and no other
3 defendants to the Second Amended Complaint of Plaintiffs InsWeb Corporation, Leadpoint,
4 Inc., Internet Brands, Inc. and Auto Internet Marketing, Inc. (collectively, "Plaintiffs"), filed on
5 June 16, 2008, as follows:

6 **ANSWER**

7 **NATURE OF ACTION**

8 1. This is a claim for patent infringement arising under the patent laws of the
9 United States, Title 35 of the United States Code, including 35 U.S.C. §§ 271 and 281.

10 **ANSWER:** OneCommand Defendants admit that Plaintiffs' Second Amended Complaint
11 purports to state a claim arising under the patent laws of the United States, but deny Plaintiffs'
12 Second Amended Complaint states a valid claim.

13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the subject matter of this action under 28
15 U.S.C. § 1338(a).

16 **ANSWER:** OneCommand Defendants admit that this Court has subject matter jurisdiction
17 over disputes arising under the patent laws of the United States, but deny Plaintiffs' Second
18 Amended Complaint states a valid claim.

19 3. Defendants are subject to personal jurisdiction in this judicial district because,
20 upon information and belief, each Defendant has transacted and is transacting business and has
21 regularly solicited and is soliciting business in California and specifically in this district.

22 **ANSWER:** Admitted.

23 4. Defendants are also subject to personal jurisdiction in this judicial district
24 because, upon information and belief, each Defendant has committed and/or is committing acts
of infringement in this judicial district.

ANSWER: Denied.

5. Venue is proper under 28 U.S.C. § 1391(b) and (c) and 1400(b), as each
defendant is subject to personal jurisdiction, does business, and has committed acts of
infringement in this judicial district.

1 **ANSWER:** OneCommand Defendants admit that venue is proper; all other allegations are
2 denied.

3 **PLAINTIFFS AND THE PATENT-IN-SUIT**

4 6. The patent-in-suit is United States Patent No. 6,898,597 (“the ‘597 patent”),
5 entitled “Event Log” (Exhibit A). The ‘597 patent was filed on November 9, 1999 and issued
6 on May 24, 2005.

7 **ANSWER:** OneCommand Defendants admit that a copy of United States Patent No.
8 6,898,597 (“the ‘597 patent”), entitled “Event Log” is attached as Exhibit A to Plaintiffs’
9 Second Amended Complaint. OneCommand Defendants further admit that the ‘597 patent
10 indicates that it was filed on November 9, 1999 and issued on May 24, 2005.

11 7. InsWeb is a corporation organized and existing under the laws of the State of
12 Delaware and has its principal offices at 11290 Pyrites Way, Suite 200, Gold River, California
13 95670. Plaintiff LeadPoint is a Delaware Corporation with its principal offices at 1661 San
14 Vincente Boulevard, Suite 800, Los Angeles, California 90049. Internet Brands is a Delaware
15 Corporation with its principal offices at 909 North Sepulveda Boulevard, 11th Floor, El
16 Segundo, California 90245. AIM is a Corporation with its principal offices at 2495 Enterprise
17 Road, Suite 201, Clearwater, Florida 33763.

18 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
19 these allegations, therefore the allegations are denied.

20 8. Plaintiffs are co-owners of all rights, title, and interest in and each has standing
21 to sue for infringement of the ‘597 patent.

22 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
23 these allegations, therefore the allegations are denied.

24 9. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 to the extent
such requirements are applicable to this suit.

ANSWER: OneCommand Defendants are without sufficient information to admit or deny
these allegations, therefore the allegations are denied.

DEFENDANT AUTOBYTEL

10. Defendant Autobytel is a Delaware corporation with its principal place of
business at 18872 MacArthur Boulevard, Irvine, California 92612. Defendant Autobytel may

1 be served through its registered agent for service of process, CT Corporation System, at 818
2 West Seventh Street, Los Angeles, California 90017.

3 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
4 the allegations in this paragraph; therefore the allegations are denied.

5 11. Defendant Autobyte, directly or by and through its subsidiaries, agents,
6 representatives, and/or assignees, marketed and/or sold the WebControl internet lead
7 management software product ("WebControl") and marketed and/or sold its Retention
8 Performance Marketing technology ("RPM technology") (collectively, WebControl and the
9 RPM technology shall be referred to herein as the "Technology").

10 **ANSWER:** OneCommand Defendants admit that up until June 29, 2007, Autobyte Inc.
11 directly or indirectly marketed and/or sold RPM Technology. OneCommand Defendants are
12 without sufficient information to admit or deny the remaining allegations in this paragraph;
13 therefore the allegations are denied.

14 12. Upon information and belief, Defendant Autobyte, directly or through its
15 agents, representatives, and/or assignees, has infringed one or more of the claims of the '597
16 patent in violation of 35 U.S.C. § 271 by, without authority, (1) making, using, offering to sell
17 and selling systems and/or methods that embody the invention claimed in the '597 patent; and/or
18 (2) actively inducing and/or contributing to others' infringement of the invention claimed in the
19 '597 patent. Defendant Autobyte's infringing activities have occurred at least through the
20 operation, sale, and/or promotion of the Technology.

21 **ANSWER:** Denied.

22 13. Autobyte's acts of infringement have injured Plaintiffs. Accordingly,
23 Plaintiffs are entitled to recover damages adequate to compensate them for such infringement,
24 but in no event less than a reasonable royalty.

25 **ANSWER:** Denied.

26 14. Autobyte, by and through its wholly-owned subsidiary, Defendant AVV,
27 purported to sell assets infringing on Plaintiffs' '597 patent, including but not limited to
28 purported rights in the Web Control technology, to Defendant Dominion Enterprises pursuant to
29 an Asset Purchase Agreement dated January 23, 2008. In connection with the sale, certain
30 contracts relating to AVV's business were assigned to Defendant Dominion Enterprises. The
31 purchase price pursuant to that agreement was \$22,750,000. Autobyte, by and through its
32 affiliated business, Defendant RPM, sold its Retention Performance Marketing business,
33 including but not limited to purported rights in the RPM technology infringing on Plaintiffs'
34 '597 patent to Defendant One Command (formerly known as Call Command) pursuant to a
35 Stock Purchase Agreement dated June 29, 2007. In connection with the sale, certain contracts
36 relating to RPM's business were assigned to Defendant OneCommand. The purchase price
37 pursuant to that agreement was \$7,660,840.

1 **ANSWER:** OneCommand Defendants admit that pursuant to a Stock Purchase Agreement
 2 dated June 29, 2007, Autobytel sold 100% of the outstanding capital stock of Retention
 3 Performance Marketing, Inc., Autobytel's then-subsiary, including RPM's Retention
 4 Performance Marketing business and the related RPM Technology, to Defendant OneCommand
 5 (formerly known as Call Command). OneCommand Defendants also admit that certain
 6 contracts related to RPM's business were assigned to Defendant OneCommand. OneCommand
 7 Defendants further admit that the purchase price pursuant to that agreement was
 8 \$7,000,000, plus a working capital adjustment of approximately \$687,719. OneCommand
 9 Defendants are without sufficient information to admit or deny the remaining allegations in this
 10 paragraph; therefore the allegations are denied.

11 **DEFENDANT AVV**

12 15. Defendant Autobytel I Corporation is a Delaware corporation formerly known
 13 as AVV, Inc. and referred to herein as "AVV." AVV is a wholly-owned subsidiary of
 14 Defendant Autobytel. Upon information and belief, AVV's principal place of business is 9200
 15 Worthington Road, Westerville, Ohio 43082. Defendant AVV may be served through its
 16 registered agent for service of process, CT Corporation System, at 818 West Seventh Street, Los
 17 Angeles, California 90017.

18 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
 19 the allegations in this paragraph; therefore the allegations are denied.

20 16. Defendant AVV, directly or by and through its parent, agents, representatives,
 21 and/or assignees, developed, marketed, and/or sold the WebControl internet lead management
 22 software product ("WebControl").

23 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
 24 the allegations in this paragraph; therefore the allegations are denied.

17. Upon information and belief, AVV has infringed one or more claims of the
 '597 patent in violation of 35 U.S.C. § 271 by, without authority, (1) making, using, offering to
 sell and selling systems and/or methods that embody the invention claimed in the '597 patent;
 and/or (2) actively inducing and/or contributing to others' infringement of the invention claimed
 in the '597 patent. AVV's infringing activities have occurred at least through the creation,
 operation, sale, and/or promotion of WebControl.

ANSWER: Denied.

18. Pursuant to an Asset Purchase agreement dated January 23, 2008, Defendant
 AVV purported to sell assets infringing on Plaintiffs' '597 patent, including but not limited to

1 WebControl, to Defendant Dominion Enterprises. In connection with the sale, certain contracts
2 relating to AVV's business were assigned to Defendant Dominion Enterprises. The purchase
price pursuant to that agreement was \$22,750,000.

3 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
4 the allegations in this paragraph; therefore the allegations are denied.

5 **DEFENDANT DOMINION ENTERPRISES**

6 19. On information and belief, Defendant Dominion Enterprises is a general
partnership organized under the laws of the State of Virginia.

7 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
8 the allegations in this paragraph; therefore the allegations are denied.

9 20. Dominion Enterprises entered into an Asset Purchase Agreement with
10 Defendants Autobyte and AVV on or about January 23, 2008, for a purchase price of
\$22,750,000.

11 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
12 the allegations in this paragraph; therefore the allegations are denied.

13 21. (Paragraph 21 omitted by Plaintiffs).

14 22. Pursuant to that agreement, Dominion Enterprises purchased from Defendants
15 Autobyte and AVV certain assets, including but not limited to the WebControl internet lead
16 management software product ("WebControl"), that infringes on the invention that is the subject
of the '597 patent. Certain contracts relating to AVV's business were also assigned to Dominion
Enterprises in connection with that agreement.

17 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
18 the allegations in this paragraph; therefore the allegations are denied.

19 23. Upon information and belief, Dominion Enterprises has infringed one or more
20 claims of the '597 patent in violation of 35 U.S.C. §271 by, without authority, (1) making, using,
offering to sell and selling systems and/or methods that embody the invention claimed in the
21 '597 patent; and/or (2) actively inducing and/or contributing to others' infringement of the
invention claimed in the '597 patent. Dominion Enterprises' infringing activities have occurred
at least through the operation, sale, and/or promotion of the WebControl software.

22 **ANSWER:** Denied.

23 24. Upon information and belief, Defendant Dominion Enterprises continues to
24 promote, advertise, offer for sale and sell the infringing products, including WebControl.

1 **ANSWER:** OneCommand Defendants are without sufficient information to admit or deny
2 the allegations in this paragraph; therefore the allegations are denied.

3 25. Dominion Enterprises' acts of infringement have injured Plaintiffs.
4 Accordingly, Plaintiffs are entitled to recover damages adequate to compensate it for such
infringement, but in no event less than a reasonable royalty.

5 **ANSWER:** Denied.

6 26. Dominion Enterprises' acts of infringement will continue to injure Plaintiffs,
7 unless and until this Court enters an injunction prohibiting further infringement of the claimed
inventions in the '597 patent.

8 **ANSWER:** Denied.

9 **DEFENDANT RPM**

10 27. Defendant Retention Performance Marketing, Inc. ("RPM") is a Delaware
11 corporation with its principal place of business at 1892 MacArthur Boulevard, Suite 200,
Irvine, California 92612. Defendant RPM may be served through its registered agent for
12 service of process, The Corporation Trust Company, Corporation Trust Center, 1209 Orange
Street, Wilmington, Delaware 19801.

13 **ANSWER:** OneCommand Defendants deny that RPM's principal place of business is
14 1892 MacArthur Boulevard, Suite 200, Irvine, California 92612; all other allegations in this
15 paragraph are admitted.

16 28. Defendant RPM, directly or by and through its subsidiaries, agents,
representatives, and/or assignees, marketed and/or sold the infringing RPM technology.

17 **ANSWER:** OneCommand Defendants admit that when RPM was a subsidiary of Autobyte
18 Inc. prior to June 29, 2007, RPM marketed and/or sold the RPM Technology; all other
19 allegations in this paragraph are denied. .

20 29. Upon information and belief, Defendant RPM, directly or through its agents,
21 representatives, and/or assignees, has infringed one or more of the claims of the '597 patent in
violation of 35 U.S.C. § 271 by, without authority, (1) making, using, offering to sell and selling
22 systems and/or methods that embody the invention claimed in the '597 patent; and/or (2)
actively inducing and/or contributing to others' infringement of the invention claimed in the
23 '597 patent. Defendant RPM's infringing activities have occurred at least through the operation,
sale, and/or promotion of the RPM technology.

1 **ANSWER:** Denied.

2 30. RPM's acts of infringement have injured Plaintiffs. Accordingly, Plaintiffs are
3 entitled to recover damages adequate to compensate them for such infringement, but in no event
4 less than a reasonable royalty.

4 **ANSWER:** Denied.

5 31. RPM purported to sell its Retention Performance Marketing business,
6 including the purported interest in the RPM technology infringing on Plaintiffs' '597 patent, to
7 Defendant OneCommand pursuant to a Stock Purchase Agreement dated June 29, 2007. In
8 connection with the sale, certain contracts relating to RPM's business were assigned to
9 Defendant OneCommand. The purchase price pursuant to that agreement was \$7,660,840.

9 **ANSWER:** OneCommand Defendants admit that when RPM was a subsidiary of Autobytel
10 Inc., on June 29, 2007 Autobytel Inc. entered into a Stock Purchase Agreement between with
11 Call Command for the purchase price of \$7,000,000 with a working capital adjustment of
12 \$687,719. All other allegations in this paragraph are denied.

12 **DEFENDANT ONECOMMAND**

13 32. On Information and belief, Defendant OneCommand, Inc., formerly known as
14 Call Command, Inc. ("OneCommand") is a Delaware corporation that may be served through its
15 registered agent for service of process, The Corporation Trust Company, Corporation Trust
16 Center, 1209 Orange Street, Wilmington, Delaware 19801.

16 **ANSWER:** Admitted.

17 33. OneCommand entered into a Stock Purchase Agreement with Defendants
18 Autobytel and RPM on or about June 29, 2007 for a purchase price of \$7,660,840.

18 **ANSWER:** OneCommand Defendants admit when RPM was a subsidiary of Autobytel Inc.,
19 on June 29, 2007 Autobytel Inc. entered into a Stock Purchase Agreement with Call Command
20 for the purchase price of \$7,000,000 with a working capital adjustment of \$687,719.

21 34. Pursuant to that agreement, OneCommand purchased from Defendant
22 Autobytel and RPM certain assets, including but not limited to a purported interest in the RPM
23 technology that infringes on the invention that is the subject of the '597 patent. In connection
24 with the sale, certain contracts relating to RPM's business were assigned to Defendant
OneCommand.

1 **ANSWER:** OneCommand Defendants admit that when RPM was a subsidiary of Autobyte
2 Inc. prior to June 29, 2007; pursuant to a Stock Purchase Agreement, Call Command purchased
3 100% of stock of RPM, and in connection with the sale, certain contracts relating to RPM's
4 business were assigned; all other allegations in this paragraph are denied.

5 35. Upon information and belief, OneCommand has infringed one or more of the
6 claims of the '597 patent in violation of 35 U.S.C. § 271 by, without authority, (1) making,
7 using, offering to sell and selling systems and/or methods that embody the invention claimed in
8 the '597 patent; and/or (2) actively inducing and/or contributing to others' infringement of the
9 invention claimed in the '597 patent. OneCommand's infringing activities have occurred at
10 least through the operation, sale, and/or promotion of the RPM technology.

11 **ANSWER:** Denied.

12 36. Upon information and belief, Defendant OneCommand continues to promote,
13 advertise, offer for sale and sell the infringing products, including the RPM technology.

14 **ANSWER:** Denied.

15 37. OneCommand's acts of infringement have injured Plaintiffs. Accordingly,
16 Plaintiffs are entitled to recover damages adequate to compensate them for such infringement,
17 but in no event less than a reasonable royalty.

18 **ANSWER:** Denied.

19 38. OneCommand's acts of infringement will continue to injure Plaintiffs, unless and
20 until this Court enters an injunction prohibiting further infringement of the claimed inventions
21 in the '597 patent.

22 **ANSWER:** Denied.

23 **AFFIRMATIVE DEFENSES**

24 OneCommand Defendants assert the following Affirmative Defenses against Plaintiffs'
claims and reserve the right to further amend its responses as additional information becomes
available:

1. Retention Performance Marketing, Inc. and OneCommand, Inc. have not and do
not infringe any valid claim of the '597 patent, nor has Retention Performance Marketing, Inc.
and OneCommand, Inc. knowingly contributed to or induced the infringement of others by

1 willfully and intentionally aiding, assisting and encouraging the alleged infringement of the '597
2 patent.

3 2. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
4 §102(a) on the ground that the claimed invention was "known or used" by others prior to the
5 alleged invention thereof by the named inventor of said patent.

6 3. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
7 §102(b) on the ground that the claimed invention was patented, described in a printed
8 publication, in public use or was on sale more than one year prior to the date of the application
9 for patent.

10 4. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
11 §103 on the ground that the claimed invention would have been obvious to one of ordinary skill
12 in the art at the time the invention was made.

13 5. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
14 §112 on the ground that the inventors failed to disclose the best mode to practice the invention.

15 6. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
16 §112 on the ground that the patent is not enabling.

17 7. The claims of the '597 patent are invalid and/or unenforceable under 35 U.S.C.
18 §112 on the ground that the claims are indefinite and that the written description is inadequate.

19 8. Plaintiffs are estopped from construing any claim of the '597 patent to cover or
20 include any product, process, device, component or structure made, used, sold or offered for
21 sale by Defendants because of positions taken during the prosecution before the United States
22 Patent and Trademark Office of the application which resulted in the '597 patent.

23 9. Defendants adopt and incorporate herein all affirmative defenses available
24 pursuant to Federal Rule of Civil Procedure 8 (or any applicable statute or regulation), to the

1 extent the facts known at this time would make any of said defenses available or facts developed
2 in the future would make same available. No affirmative defense is waived.

3 **COUNTERCLAIMS**

4 Counter-Plaintiffs, Retention Performance Marketing, Inc. and OneCommand, Inc.
5 (collectively "Counter-Plaintiffs"), allege the following Counterclaims against Counter-
6 Defendants, InsWeb Corporation, Leadpoint, Inc., Internet Brands, Inc. and Auto Internet
7 Marketing, Inc. ("InsWeb"), as follows:

8 **PARTIES**

9
10 1. Retention Performance Marketing, Inc. is a Delaware corporation with its
11 principal place of business at 11500 Northlake Drive, Suite 240, Cincinnati, Ohio 45249.

12 2. OneCommand, Inc. is a Delaware corporation formerly known as CallCommand.
13 with a principal place of business at 11500 Northlake Drive, Suite 240 Cincinnati, Ohio 45249.

14 3. Upon information and belief, InsWeb Corporation is a corporation organized and
15 existing under the laws of the State of Delaware and has its principal offices at 11290 Pyrites
16 Way, Suite 200, Gold River, California 95670.

17 4. Upon information and belief, LeadPoint, Inc. is a Delaware Corporation with its
18 principal offices at 1661 San Vincente Boulevard, Suite 800, Los Angeles, California 90049.

19 5. Upon information and belief, Internet Brands, Inc. is a Delaware Corporation with
20 its principal offices at 909 North Sepulveda Boulevard, 11th Floor, El Segundo, California
21 90245.

22 6. Upon information and belief, Auto Internet Marketing, Inc. is a Corporation with
23 its principal offices at 2495 Enterprise Road, Suite 201, Clearwater, Florida 33763.
24

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over the patent infringement counterclaims pursuant to 28 U.S.C. § 1331 and 1338(a). By its Second Amended Complaint, InsWeb has submitted itself to the jurisdiction and venue of this Court and has created an actual controversy with Counter-Plaintiffs. Venue in the district is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b).

8. On information and belief, InsWeb owns all of the substantial rights in U.S. Patent 6,898,597 for an alleged invention entitled “Event Log.”

FIRST COUNTERCLAIM

(Declaratory Judgment for Non-Infringement of the ‘597 Patent)

9. Counter-Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1-5 above as though fully set forth.

10. InsWeb has filed suit against Counter-Plaintiffs and others alleging in its Second Amended Complaint that Counter-Plaintiffs have infringed the ‘597 patent. As a result of the filing of the lawsuit and these allegations, Counter-Plaintiffs have a reasonable apprehension that InsWeb will continue to assert the ‘597 patent against Counter-Plaintiffs.

11. Counter-Plaintiffs have not infringed, and are not infringing, whether directly, indirectly, contributorily or by inducement, or otherwise, any valid claims of the ‘597 patent.

12. An actual and justiciable controversy exists between Counter-Plaintiffs and InsWeb regarding Counter-Plaintiffs’ non-infringement of the ‘597 patent that is within the jurisdiction of this Court.

13. By reason of the foregoing, Counter-Plaintiffs are entitled to a declaratory judgment by this Court that Counter-Plaintiffs do not infringe any claim of the ‘597 patent.

SECOND COUNTERCLAIM

(Declaratory Judgment for Invalidity of the '597 Patent)

14. Counter-Plaintiffs re-allege and incorporate herein by reference the allegations of paragraphs 1-10 above as though fully set forth.

15. InsWeb has filed suit against Counter-Plaintiffs and others alleging in its Second Amended Complaint that Counter-Plaintiffs have infringed the '597 patent. As a result of the filing of the lawsuit and these allegations, Counter-Plaintiffs have a reasonable apprehension that InsWeb will continue to assert the '597 patent against Counter-Plaintiffs.

16. One or more claims of the '597 patent are invalid under one or more of the provisions of 35 U.S.C. §§ 102, 103 and/or 112.

17. An actual and justiciable controversy exists between Counter-Plaintiffs and InsWeb regarding the invalidity of the '597 patent that is within the jurisdiction of this Court.

18. Based upon the foregoing, Counter-Plaintiffs are entitled to a declaratory judgment by this Court that one or more claims of the '597 patent is invalid.

JURY DEMAND

Counter-Plaintiffs demand a trial by jury on all issues properly triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Retention Performance Marketing, Inc. and OneCommand, Inc. request the following relief:

A. Dismissal of InsWeb's Second Amended Complaint, with prejudice, including an award to Retention Performance Marketing, Inc. and OneCommand, Inc. of their reasonable costs and attorneys' fees;

- 1 B. A declaration that Retention Performance Marketing, Inc. and OneCommand, Inc.
2 have not infringed, induced infringement or contributed to the infringement of any
3 claim of the '597 patent;
- 4 C. A declaration that the '597 patent is invalid and/or unenforceable;
- 5 D. Judgment in favor of Retention Performance Marketing, Inc. and OneCommand,
6 Inc. on all of InsWeb's claims;
- 7 E. A declaration that this case is exceptional and an award to Retention Performance
8 Marketing, Inc. and OneCommand, Inc. their attorneys' fees and costs as provided
9 by 35 U.S.C. § 285;
- 10 F. Such other and further relief as this Court and/or a jury may deem proper and just.
- 11
12

13 Dated: August 4, 2008

JACZKO GODDARD LLP
NIRO, SCAVONE, HALLER & NIRO

14
15 By: /s/ Allison H. Goddard
Allison H. Goddard
Attorneys for Defendants

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CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2008, I caused the foregoing **ANSWER AND COUNTERCLAIMS OF RETENTION PERFORMANCE MARKETING, INC. AND ONECOMMAND. INC. TO PLAINTIFFS' SECOND AMENDED COMPLAINT** to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record who have consented to electronic service as identified on the Notice of Electronic Filing.

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